IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14/02/2003

CORAM

THE HONOURABLE MR. JUSTICE K.P.SIVASUBRAMANIAM

WRIT PETITION NO.8155 OF 1994 and WRIT PETITION NO. 19644 of 1994

W.P.No.8155 of 1994

M/s.Ashok Leyland Limited,
Ennore,
Madras-600 057. .. Petitioner

-Vs-

1.The Presiding Officer,
Second Addl. Labour Court,
Madras.
2.M.Shyam Sundar .. Respondents

W.P.No.19644 of 1994

N.Shiyam Sundar .. Petitioner

Vs.

1.The Presiding Officer,
Second Addl. Labour Court,
Madras.

2.The Management of Ashok
Leyland Limited,
Ennore, Madras-600 057. .. Respondents

Writ petitions filed under Article 226 of the Constitution of
India praying for the issue of Writs of Certiorari for the reasons stated
therein.

For petitioner in WP 8155/94 : Mr.Sanjay Mohan for
Mr.S.Ramasubramaniam

For petitioner in WP 19644/94 : Mr.S.Ayyathurai

For respondents in WP 8155/94 : Mr.S.Ayyathurai

For respondents in WP 19644/94 : Mr.S.Ramasubramaniam

:O R D E R

Both the above writ petitions arise out of the order of the Labour Court, Madras in I.D.No.83 of 1986 dated 21.12.1993, one filed by the management and the other by the employee.

2. The employee joined the service of the company as an apprentice/machinist and at the time of dismissal from service, he was working as a checker in the stores of the management. According to him, his duties were to receive the materials from the suppliers, count them and keep them in the respective places in the open yard and sign the delivery challans. According to the management, he came to adverse notice of an alleged fraudulent act and he was issued with a charge sheet dated 6.9.1984 alleging as follows:-

"It is reported that on 29.8.1984, you had fraudulently acknowledged a delivery challan No.R.S.148, purporting to have received 107 Nos. of Axle Arm Forgings to Part S 3236111 whereas not even an Axle Arm Forging under the above Delivery Challan was received in the Factory".

It is further reported that on 2.9.1984, you had fraudulently acknowledged a Delivery Challan No.M.107, purporting to have received 168 Nos. of Axle Arm Forging, under the above Delivery Challan was received in the factory. It is also reported that due to your above alleged fraudulent act, the Company had incurred a loss of approximately Rs.1,15,500/-"

3. Similar charges were also alleged against another co-employee/the Receipt Clerk on the same facts and as their explanations were not found to be satisfactory, an enquiry was conducted. The Enquiry Officer found the employee herein as guilty of the charges, but found that the Receipt Clerk was not guilty of the charges. According to the management, they had complied with all the requirements and also after duly considering the past record of the employee, dismissed the petitioner from service by letter dated 31.1.1985.

4. The employee raised a dispute as detailed earlier. The Labour Court after holding that the enquiry has been conducted properly and also the charges were made out, passed an award directing reinstatement of the employee without back wages but with continuity of service. The management aggrieved by the same had filed Writ Petition No.8155 of 1994 and the employee had filed 19644 of 1994 questioning the part of the award holding the employee as guilty of the charges levelled against him.

5. Mr.Sanjay Mohan, learned counsel appearing for the management contends that the charge is of a very serious nature and the Labour Court having found that the charges had been proved ought not to have directed reinstatement. It is not desirable for the management to take back the petitioner in employment who has been found guilty of a serious charge of misconduct of the nature of a theft or misappropriation of the property belonging to the management. The Labour Court after having found that the delinquent was guilty of cheating the management, had strangely

directed reinstatement mainly on the ground that another co-employee who was also equally responsible (in the assessment of the Labour Court), was retained in service. The Labour Court was not alive to the issue that in the domestic enquiry, the coemployee was found not guilty of the charges. Therefore of the reasonings rendered by the Labour Court for directing reinstatement were vitiated by perversity and non application of mind. It was further clearly established that the delinquent was gainfully employed in some other company.

6. Learned counsel further contends that it is a settled proposition that in the case of a charge of theft or misappropriation or mishandling of funds, no proof of loss was required when once the charge was established. If such individuals are required to be kept in service, the same would result in serious damage and loss to the management. Reliance is placed on the observations of the Supreme Court in State Bank of India vs. T.J.Paul (1999 4 SCC 759), holding that in such cases proof of actual loss was not necessary. Reference was also made to few other judgments which will be dealt with later.

7. Mr.Ayyathurai, learned counsel for the employee contends that the finding by the Labour Court holding the employee guilty of charges was not warranted in the facts and circumstances of the case. The management had mainly relied on the alleged confession statement of one Kannan and hence the said individual ought to have been made available for cross-examination by the employee. In fact, the employee objected to the reception of the alleged confession statement. Therefore, the employee was gravely prejudiced. It has also been specifically alleged by the employee that Kannan was kept in the premises of the company for a full day and hence the statement had been obtained from him under coercion. Therefore, no reliance ought to have been placed on Ex.M.3, the letter by the said Kannan.

8. Learned counsel further contends that the enquiry has not been properly conducted and no second show cause notice had been issued to the employee. It is further pointed out that the employee in his amended claim statement had pointed out the discrimination practiced by the management and had also pointed out various other irregularities in the conduct of the enquiry. The Labour Court had taken note of only the issue of discriminatory treatment of not taking action against another employee. But in other respects, the Labour Court had ignored the various points raised in the amended claim petition.

9. Mr.Ayyathurai further contends that at any rate, proper reasons have been given by the Labour Court for ordering reinstatement and such a discretion was available to the Labour Court and was in fact imperative to comply with the requirements under Section 11 (A) of the Industrial Disputes Act. The discretion having been properly exercised, there was no question of any perversity in the conclusions by the Labour Court. The Labour Court had taken into account, the over all circumstances and had concluded that the punishment of dismissal was disproportionate to the delinquency and that in similar cases, the Supreme Court and this Court had not only directed reinstatement but had also awarded payment of back wages. This Court will not interfere under Article 226 of the

Constitution setting aside the well considered order of the Labour Court.

10. Reliance is placed on the judgment of the Supreme Court in Scooter India Limited, Lucknow vs. Labour Court, Lucknow (1989 I LLJ 7 1), holding that the Labour Court even while finding the enquiry to be fair and lawful was justified in setting aside the dismissal and ordering reinstatement with 75% back wages.

11. In National Carbon Company, Madras vs. Labour Court, Madras (19897 (1) LLJ 405) a learned single Judge of this Court held that it was not the function of the High Court while exercising the powers under Article 226 to review the evidence and to arrive at an independent finding. In the same judgment, it was also held that the Labour Court was vested with the power to interfere with the punishment and to award a lesser punishment even if the employer had proved the misconduct against the delinquent.

12. In Coimbatore Periyar District Dravida Panchalai Thozilalar Munnetra Sangam and Management of Pionner Mills Limited (2001 (3) LLN 269), a Division Bench of this Court awarded a reasonable compensation of Rs.2,50,000/- in lump sum by finding that the termination of the employee was incorrect.

13. In Management of Essorpe Mills (P) Ltd., Coimbatore and Presiding Officer, Labour Court, Coimbatore and another (1998 (1) LLJ 120 4), P. SATHASIVAM, J., on the facts held that under Section 11(A) of the Industrial Disputes Act, the Labour Court was justified in interfering with the quantum of punishment, setting aside the order of termination and directing the reinstatement with 50% back wages. It is further held that the High Court cannot interfere with the award of the Labour Court interfering with the quantum of punishment.

14. In G.Jayaraman vs. Chief Geneal Manager, State Bank of India and another (2001 (2) LLN 460), a Division Bench of this Court after finding that the punishment was disproportionate to the misconduct ordered payment of compensation in lieu of reinstatement.

15. In Colour-chem Limited vs. A.L.Alaspurkar and others (1998 (2) LLN 84), the Supreme Court held that wherever the delinquency does not cover a major misconduct, punishment of dismissal or discharge will be shockingly disproportionate. The past records should be considered while awarding punishment for minor misconduct.

16. Further reference is also made to the another judgment of the Supreme Court in Palghat BPL and PSP Thozhilali Union vs. BPL India Limited and another (1996 (2) LLJ 335). The Supreme Court held that under Section 11 (A) of the Industrial Disputes Act, the Labour Court has discretion to consider the nature of misconduct and quantum of punishment.

17. In reply, Mr.Sanjay Mohan
contended that as far the allegation of discrimination was concerned, the Enquiry Officer found the other employee not guilty of the charges. As regards examining Kannan as witness, he was not an employee of the petitioner establishment and hence not in the control of the management. Nothing prevented the employee from summoning him as a witness if he was convinced that the statement from Kannan had been obtained under coercion.

18. I have considered the submissions
of both sides.

19. Cases where Labour Courts find
the delinquent guilty of the charges and also uphold the process of enquiry by confirming the finding of guilt against the employees and at the same time, interfere with the quantum of punishment, are not unusual and in fact consistent with the legislative mandate under Section 11 (A) of the Industrial Disputes Act. There can be no dispute over the said legal proposition, viz., discretion of the Labour Court to interfere with the quantum of punishment, if the punishment was shockingly disproportionate to the nature of the misconduct. I am also aware of the limited scope of interference by this Court as regards the quantum of punishment. But in this case, I am of the opinion that the Labour Court went beyond its jurisdiction, discretion and powers in interfering with the quantum of punishment on perverse reasonings and also ignorning the nature of delinquency. To appreciate the nature of delinquency, it is necessary to bear in mind the facts of the case and the nature of responsibilities of the employee and the gravity of the proved charges against him.

20. It is not disputed that as a
Checker, the employee is required to keep proper account of the materials arriving at the go-down. It has been brought out in the evidence that as soon as the goods are received from the supplier, he has to check whether the quantity tallies with the bills/receipts. Therefore, he has a onerous and direct responsibility to account for the quantity of the goods arrived at the factory. On the date in question, 350 Nos. of Axle Arm Forgings were received from M/s.Punjab United Forgings and 289 from Alarming Forgings likewise on 2.8.1994, 650 Nos. of Forgings were received from M/ s.Punjab United Forgings. Ultimately, discrepancy was found out on 31.8.1984, and it was found that a load of 107 forgings were found to be in shortage. Investigation was undertaken by the management and on a perusal of challan Nos.148 and 107, it was disclosed that the goods had been received, checked and verified by the delinquent. It is not a case of one or two Forgings alone missing, which could be attributed to miscalculation or due to oversight. The nature of the charges are undoubtedly serious in nature and the management had quantified the loss at Rs.1,15,500/-. About 107 forgings were found to be missing. It is needless to mention that the survival of any industrial or commercial establishment depends upon the basic honesty of the employees and pilferage/theft/misappropriation/corruption or in whatever manner such conduct or delinquency may be described, is the most harmful and grave misconduct which the employee could commit from the point of view of the management. Such delinquency cannot be equated to other charges resulting from momentary

actions, commissions or omissions which could be classified as indiscipline, violent behaviour, negligence, remaining on leave without permission etc., which require sympathetic approach when it comes to quantifying the punishment. All the decisions relied upon by the learned counsel for the employee, relate to such misconduct. Theft or misappropriation will stand on a different footing and no sympathy can be shown to employees indulging in such misdeeds which the management rightly considers that it would not be in the interest of the company to keep such employees in service. In fact, the Supreme Court had even empha sised that as far as charges of theft/misappropriation are concerned, it is not even necessary to prove any actual loss or damages to the management. Such a case does not call for any sympathy and the Labour Court ordering reinstatement on the ground that his past record was without any blemish was found to be improper by the Supreme Court in Janatha Bazar and Others vs. Secretary, Sahakari Noukarara Sangha and Othe rs (2000 (7) SCC 517). The same judgment would also be an authority for justifying interference by the High Court under Article 226 in deserving cases. In fact in that case, the Supreme Court interfered even though the High Court, both the learned single Judge as well as the Division Bench on appeal, confirmed the order of the Labour Court, ordering reinstatement of the employee. The Supreme Court held that it would be an unjustified direction to reinstate the employee against whom the charge of misappropriation is established.

21. In U.P. State Road Transport Corporation vs. Mohan Lal Gupta (2001 AIR SCW 2330), the Supreme Court dealt with a case of charge of misappropriation proved against the employee. The Supreme Court held that in the event of the employer loosing confidence on the employee and passes order of termination, the Court cannot substitute the finding and confidence of the employer on its own and by ordering reinstatement. It was held that by reason of the gravity of the offence, the Labour Court cannot exercise its discretion and alter the punishment.

22. I am inclined to hold that the facts of the present case correspond to and are directly covered by the two judgments of the Supreme Court as mentioned above. The attitude of the Labour Court in this case, having found the charges as proved and that the enquiry had also been conducted properly and at the same time should have ordered reinstatement, has to be held as uncalled for, perverse and erroneous application of the discretion under Section 11 (A). Nature of charges in this case, if proved, would inevitably result in termination of service and an employee who is found guilty of such a charge cannot be thrust upon the unwilling management and the management cannot be compelled to employ him and to undergo the loss and to continue him in employment even though he has lost the confidence of the management.

23. The further reason of discrimination is also not justified. The Enquiry Officer had given adequate reasons for not sustaining the charges against the other employee who had also been charge sheeted. It has to be borne in mind that the management had impartially taken action, framed charges and instituted enquiry against all concerned. Therefore the management cannot be attributed with any motive or

adopting double standards as the Labour Court had chosen to assume. The Enquiry Officer on an analysis of the evidence had held that it was only the delinquent who was guilty of the charges and not others, considering the nature of duties and responsibilities assigned to each of them and the actual evidence against them. The management rightly accepted the findings and took action only against the delinquent who was found guilty in the domestic enquiry. More often, we come across grievances by the employees complaining that the management notwithstanding specific findings by the Enquiry Officer in their favour, pursuing action against them by reopening the enquiry which they would describe as vindictive and without any materials. Here is a case, where the management had accepted the findings and had taken action only against the employee who had been positively found guilty. Therefore, I do not find any basis for the findings of discrimination, which assumption appears to have been mainly responsible for the Labour Court ordering reinstatement, as could be seen on a perusal of the award.

24. Therefore, for all the aforesaid reasons, I am inclined to hold that the order of the Labour Court directing reinstatement is vitiated by perversity and erroneous application of Section 11 (A) of the Industrial Disputes Act and hence the award is liable to be set aside.

25. Now coming to the writ petition filed by the employee questioning the finding of guilt as upheld by the Labour Court, I am unable to sustain any of the contentions raised on his behalf.

26. Firstly, considering the scope of interference under Article 226, this Court cannot act as an appellate authority and expressing contrary opinions on appreciation of evidence when the delinquent had been concurrently found guilty both by the Enquiry Officer and the Labour Court. Appreciation of evidence cannot be interfered with as though this is a Court of appeal on facts, unless the findings are shown to be perverse and contrary to the evidence available on record.

27. Secondly, even the petitioner could not point out any serious defect in the appreciation of evidence and the materials relied upon by the management except for the non production of Kannan for cross-examination. In this context, it has to be appreciated that Kannan is not an employee of the petitioner-management and he is an employee of the supplying firm. If the delinquent was fully convinced that the statement of Kannan had been obtained under coercion, nothing prevented the employee from examining him as a witness in the domestic enquiry or at least before the Labour Court by summoning him as a witness. The statement of Kannan had been marked as Ex.M.17, only through Venkat Ramani, who is the supplier/Punjab United Forgings Limited. The allegation of coercion against the petitioner-management has therefore no basis at all. Other witnesses had been examined and other materials such as statements given by Munusamy and others, cards issued for the removal of the goods, challans endorsed by the delinquent showing the receipt of goods on each day etc., have been relied upon by the Enquiry Officer and it is not as though the conclusions have been

arrived at only on the basis of the statement of Kannan. In fact, none of those other materials were even referred to before me on behalf of the delinquent nor the relevancy or genuineness of those materials were questioned. Therefore the only circumstance of non-examination of Kannan alone cannot result in ignoring the other concrete materials accepted both by the Enquiry Officer and the Labour Court.

28. Thirdly, the contention that a second show cause notice should have been issued is also not acceptable. It is admitted that the standing orders of the company do not require issuing of a second show cause notice. The fact that there is no such requirement under the standing orders, is not disputed by the learned counsel for the petitioner/employee. Therefore, there is no irregularity in the ultimate order passed by the management. Neither before the Enquiry Officer nor before the Labour Court had the employee established any prejudice in not having been issued with a second show cause notice.

29. Fourthly, as regards the contention of the learned counsel for the petitioner that the order of dismissal does not disclose any aggravating circumstance in the conduct of the delinquent so as to justify an order of dismissal and hence there was a violation of the standing orders, I am inclined to point out that S.O. No.20 (iii) requires reference to be made to aggravating circumstance "if any". If there are no such aggravating circumstances, it is not possible to expect any reference to be made in the order of dismissal. The very nature of delinquency is serious enough without any necessity to refer to any aggravating circumstances to justify the order of dismissal.

30. Therefore, I do not find any ground to either to hold that the enquiry had not been properly conducted nor to interfere with the concurrent findings holding that the charges against the delinquent are proved. For the same reason, I am also unable to sustain the order of the Labour Court in interfering with the quantum of punishment and directing the management to reinstate the employee in service in spite of having found that the serious misconduct/charge had been proved. From the point of view of the management, absolute integrity has to be maintained in

the running of any industry/commercial establishment and there can be no direction to the management compelling an employee found guilty of serious charges to be taken into service.

31. It is also found that the employee is gainfully employed in Tamil Nadu Petro Chemicals Limited even with effect from 23.5.1986 itself. This fact is not disputed by the employee in his reply statement except for stating that the salary was lesser than what he would be entitled to from the petitioner-management, which claim is disputed by the management. It is not necessary to find out whether the salary of the employee would be more or less than what he is receiving now in Tamil Nadu Petro Chemicals Limited. But the fact that he is gainfully employed is also a fact which would certainly bring out that an order of reinstatement was

uncalled for, even assuming that the employee deserved any sympathy in this case, having regard to the nature of delinquency.

32. Reference to judgments awarding compensation in lieu of reinstatement, are also inappropriate. Question of ordering compensation would arise only in a case where the delinquency is of a nature which may justify sympathetic approach or the punishment is disproportionate or where the order of termination does not strictly conform to procedural requirements or principles of natural justice and at the same time, the Court feels that the direction for reinstatement was not necessary on the facts and circumstances. In this case as the order of termination is justified, there is no question of compensating the employee.

33. With the result, the award of the Labour Court directing reinstatement of the delinquent is set aside and the punishment awarded by the management is confirmed. W.P.No.8155 of 1994 is allowed and W.P.No.19644 of 1994 is dismissed. No costs. Consequently, connected WPMP No.12411 of 1994 is also dismissed.

Index : Yes.
Internet: Yes.

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To

The Presiding Officer,
Second Addl. Labour Court,
Madras.